

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AQUA ILLINOIS, INC.	)	
	)	
Petition for a Certificate of Public Convenience	)	
and Necessity to Construct, Operate and Maintain	)	Docket No. 13-0246
a Water Distribution System and a Wastewater	)	
Collection System in areas of Kankakee and Will	)	
Counties, Illinois.	)	

**AQUA ILLINOIS, INC.'S INITIAL BRIEF**

Dated: March 6, 2014

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## **I. INTRODUCTION**

Although it meets or exceeds all Illinois Environmental Protection Agency standards, the water in University Park is very hard. For years, Aqua Illinois' customers there have complained to the Commission and to Aqua about this, and they have asked Aqua to improve their water's aesthetics. In response to these concerns, Aqua studied alternatives for supplying University Park with better water. Aqua's conclusion: building a water main to transmit softened, filtered water from Aqua's Kankakee service area to its University Park service area is the least-cost means of supplying University Park with softened, filtered water. To construct the main, however, Aqua needs authorization from the Commission in the form of the Certificate of Public Convenience and Necessity (Certificate) that it requests in this proceeding.

Commission Staff agrees that there is a need for higher quality drinking water in Aqua's University Park service area. And Staff agrees that Aqua's proposed water transmission main is necessary and is the least-cost means of meeting that need. Staff also agrees that Aqua otherwise has met the requirements for a Certificate to construct the main.

Only intervening Will County municipalities the Villages of Peotone and Monee and the City of Wilmington (collectively, Intervenor) oppose Aqua's request. But Intervenor do not dispute the legitimacy of University Park customers' water aesthetics complaints. And they do not present any compelling evidence that Aqua's proposed solution is not the least-cost means of resolving those complaints. Rather, the true gist of Intervenor's opposition to the Certificate is that they want to lay sole claim to the area it covers (and then some). But they have no existing water infrastructure in that area and no immediate plan to extend water utility service or infrastructure there. And they concede that, legally, Aqua's Certificate will not preclude them from providing water service to any area. Put simply, Intervenor give no reason to deny Aqua the Certificate or its University Park customers, better drinking water.

Aqua also asks the Commission in this proceeding for a Certificate to provide water and wastewater service to two limited areas of Will County to clarify the boundaries of an area that the Commission certificated over 25 years ago. Staff recommends that the Commission approve Aqua's request, and Intervenors either expressly do not object to or do not substantively oppose certification of the limited areas.

## **II. SUMMARY OF AQUA'S PROPOSALS**

### **A. The Water Certificate**

Aqua requests two Certificates in this case. First, Aqua requests a water-only Certificate (the Water Certificate) covering a corridor extending approximately one mile on either side of Will Center Road as it runs north-south between Aqua's Kankakee and University Park service areas. (Aqua Ex. 2.0 (Blanchette Reb.), pp. 6-7.) The Water Certificate area is shown in blue on Appendix A. (Aqua Ex. 2.1, p. 1.)<sup>1</sup> The area excludes all municipal boundaries, including Peotone and Monee's. (*Id.*; Aqua Ex. 2.0, p. 6.) (Wilmington's municipal boundary is 17 miles from the Water Certificate area. (Aqua Ex. 2.0, p. 23.)) Aqua requests the Water Certificate to construct a water transmission main extending from Aqua's existing Kankakee service area north to its existing University Park area. (*Id.* at 7.) The main will allow Aqua to transmit softened, filtered water from the former to the latter, and it will permit Aqua to meet the service demands of anticipated growth in University Park. (*Id.* at 7-8.)

Aqua proposes to route the main along Will Center Road. (*Id.* at 9.) Specifically, the main would connect to Aqua's existing 20-inch water main to Grant Park at 8000 N. Road in Kankakee County, parallel Will Center Road as it runs north, and then connect to Aqua's storage and booster facilities along Central Avenue in University Park. (*Id.* at 10.) The two-mile wide

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<sup>1</sup> Aqua Exhibit 2.2 provides the legal description for the proposed Water Certificate area.

corridor of the Water Certificate area will permit Aqua latitude, as it undertakes construction, to account for unforeseen final engineering, design, and land acquisition obstacles that could impact construction costs. This will enable Aqua ultimately to select the most feasible and least-cost route for the main within the corridor. (*Id.*; Aqua Ex. 3.0 (Blanchette Sur.), p. 4.) The Water Certificate's corridor area is similar to areas that the Commission previously has certificated to accommodate water main construction. *See, e.g., Aqua Ill., Inc., Pet. for Issuance of Cert. of Pub. Convenience & Necessity, etc.*, Docket 02-0480, Final Order, pp. 7-11 (Mar. 18, 2003) (certificating a two-mile wide corridor to accommodate construction of a water main).

Certification of the corridor also will allow Aqua to serve properties abutting the main. In Aqua's experience, property owners often request service as a point of negotiation when they grant a water main easement. (Aqua Ex. 2.0, p. 10.) For this reason, Aqua requests authority to provide water service, but water service only, in the Water Certificate area. A wastewater Certificate for the corridor is not needed, and it would not align with Aqua's primary objective of providing University Park with softened drinking water. (Aqua Ex. 1.0 (Blanchette Dir.), p. 7.)<sup>2</sup>

Staff does not object to the Water Certificate corridor area, and otherwise agrees that Aqua has satisfied the requirements for the Water Certificate. (ICC Staff Exs. 1.0 (Atwood Dir.), p. 16; 2.0 (Freetly Dir.), p. 3; 4.0 (Atwood Reb.), pp. 3, 6, 10-11.)

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<sup>2</sup> Aqua originally requested certification of the approximate 76-square mile area between the northern boundary of its Kankakee service area and the southern boundary of its University Park service area. (Aqua Exs. 1.0, p. 6; 1.1.) Aqua had identified five potential routes for the main in that area, and it requested certification of the entire area to allow it the flexibility when it undertakes construction to address unforeseen engineering, final design, and land acquisition obstacles that could increase the cost of construction, to ensure that it used the least-cost route. (Aqua Ex. 1.0, pp. 13-14.) In their direct testimony, Staff and Intervenor raised concern related to the breadth of Aqua's original request. In particular, they objected to the request because it encompassed existing municipal utility infrastructure. (ICC Staff Ex. 1.0, pp. 17-18; Peotone Ex. 1.0 (Gray Dir.), pp. 14-15; Monee Ex. 1.0 (Wallace Dir.), p. 10; Wilmington Ex. 1.0 (Graff Dir.), pp. 3-4.) To accommodate Staff and Intervenor's concerns, in its rebuttal filing, Aqua narrowed the scope of its proposed water Certificate to an approximate two-mile wide corridor paralleling Will Center Road, the most feasible of the five routes that Aqua initially identified. (Aqua Ex. 2.0, p. 6.)

## **B. The Limited Certificate**

Aqua also requests a Certificate to provide water and sewer service to two limited areas of Will County (the Limited Certificate). (Aqua Ex. 1.0, p. 7.) The Limited Certificate areas are shown in pink on Appendix A. (Aqua Ex. 2.1, p. 1.)<sup>3</sup> The Limited Certificate would clarify a discrepancy between the maps and legal description underlying a Certificate issued to Aqua by the Commission in Docket No. 87-0402. (Aqua Ex. 1.0, p. 7.) Staff recommends that the Commission grant Aqua the Limited Certificate. (ICC Staff Ex. 1.0, pp. 21-23.)

## **III. AQUA HAS MET THE REQUIREMENTS FOR THE WATER CERTIFICATE**

Under Section 8-406 of the Public Utilities Act, the Commission can grant Aqua the Water Certificate if Aqua demonstrates that: (1) the water main it proposes to construct is (a) necessary to provide adequate, reliable, and efficient service to Aqua's customers and (b) the least-cost means of satisfying their service needs; (2) Aqua has the managerial capability to construct the main; and (3) Aqua has the financial capability to finance the construction. 220 ILCS 5/8-406(b)(1)-(3). Aqua's proposal meets the Section 8-406(b) requirements for a Water Certificate, as Staff agrees.

### **A. The water transmission main is necessary to provide adequate, reliable, and efficient service to existing and future customers in University Park.**

Proposed utility construction will promote, and is necessary to, the public convenience if it "is necessary to provide adequate, reliable, and efficient service to [the utility's] customers." 220 ILCS 5/8-406(b)(1). "Necessary" as used in Section 8-406 does not mean "indispensably requisite." *Eagle Bus Lines, Inc. v. Ill. Comm. Comm'n*, 3 Ill. 2d 66, 78 (1954). Rather, proposed construction is "necessary" "[i]f it is needful and useful to the public." *Id.*; see also *Wabash C. & W. Ry. Co. v. Ill. Comm. Comm'n*, 309 Ill. 412, 418 (1929) (finding the word

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<sup>3</sup> Aqua Exhibit 2.2 provides the legal description for the Limited Certificate area.

“necessity” in (former) Section 8-406 is not used in its lexicographical sense of “indispensably requisite”); *King v. Ill. Comm. Comm’n*, 39 Ill. App. 3d 648, 653 (4th Dist. 1976). Further, the “public,” as referenced in Section 8-406(b)(1), adequately can be represented by a segment of the population. *Eagle Bus Lines*, 3 Ill. 2d at 78 (finding proposed utility service that would serve 20,000 individuals would sufficiently serve the public interest).

### **1. University Park needs better water.**

For years, customers in Aqua’s University Park service area have complained of the hardness to their water. (Aqua Ex. 1.0, p. 8.) They have contacted Aqua and the Commission’s Customer Service Division requesting a higher level of water treatment, and they have reiterated their concerns at public meetings. (*Id.*) Most recently, University Park residents have voiced their dissatisfaction with their water on the Commission’s e-Docket Public Comments forum for this case. (Aqua Ex. 3.0, pp. 12-13; *see also* <http://www.icc.illinois.gov/docket/PublicComments.aspx?no=13-0246>.) Not surprising, University Park officials have asked Aqua to find a solution to their constituents’ water quality concerns. (Aqua Exs. 1.0, p. 8; 1.3.)

In fact, although the water that Aqua supplies to University Park meets or exceeds all Illinois Environmental Protection Agency standards, testing of the water in the wells open to the Silurian Dolomite Aquifer, from which Aqua serves University Park, indicates hardness and iron levels that exceed desired limits. (Aqua Ex. 1.0, p. 8.) The noticeable effects of water with high iron levels include a bitter, metallic taste, a rusty, black, or brown appearance, and reddish or orange staining. (Aqua Ex. 2.0, p. 19; Peotone/Monee Jt. Ex. 1.0 (Nagle Dir.), USEPA attach.) It cannot be reasonably disputed that University Park needs better water.

Staff agrees. Staff witness William H. Atwood testifies “that there is a need for higher quality drinking water in [Aqua’s] existing University Park certificated service area.” (ICC Staff Ex. 1.0, p. 16.) He concludes that “Aqua has presented the need for the proposed pipeline based

upon a need to supply existing and future customers in the University Park Water Division with high quality, softened drinking water.” (ICC Staff Ex. 4.0, p. 6.) And Intervenor do not appear to dispute that University Park’s water can be improved. Peotone and Monee witness engineer Thomas E. Nagle acknowledges, for example, that based on American Water Works Association standards, the raw water in University Park is “very hard.” (Peotone/Monee Jt. Ex. 1.0, p. 10.)

The record evidence amply demonstrates that there is a service need in University Park—a need for softened, filtered drinking water. The water transmission main that Aqua proposes to construct will meet that need. Importantly, no other municipality is capable of or willing to meet the service need in University Park. (Aqua Ex. 1.0, pp. 14-15.) In fact, apart from Intervenor, Will County officials support Aqua’s proposal and its efforts to bring better drinking water to University Park. (*Id.* at 15; Aqua Exs. 1.6; 3.0, pp. 18-19.)

## **2. University Park also needs *more* water.**

The Chicago Metropolitan Area for Planning expects significant growth in southeast Will County, including University Park, through 2040. (Aqua Exs. 1.0, p. 9; 1.4, figs. 1-8.) That growth will push demand for water service in the area towards the 4.8 million gallons per day (mgd) limit of the Silurian Dolomite Aquifer that currently serves it, and, eventually, the aquifer will need to be supplemented with water from another source. (Aqua Ex. 1.0, p. 9.)

Aqua’s proposed main will provide that additional source. (*Id.*) It will connect to Aqua’s existing facilities in Kankakee, which intake water from the Kankakee River, an abundant supply of quality water. Notably, four billion gallons of water flow past Aqua’s Kankakee water treatment plant each day, and less than three tenths of one percent of the water available in the River is treated and pumped as potable water to the communities that Aqua serves. (*Id.* at 10-11.) Further, Aqua’s Kankakee water treatment plant is permitted for 22 mgd and is capable of drawing 80 mgd from the Kankakee River. (*Id.* at 11.) This is adequate capacity to meet even



coinciding peak days in Aqua's Kankakee and University Park service areas. (Aqua Ex. 3.0, p. 11.) The Kankakee River represents an ample source to supply University Park's growing population. Aqua's proposed water transmission main would allow Aqua to meet the resultant demand, and bring that added source to University Park. (Aqua Ex. 1.0, p. 9.)

**B. The water transmission main is the least-cost means of satisfying University Park customers' need for softened, filtered water.**

Proposed utility construction will promote the public convenience if it is necessary and "is the least-cost means of satisfying the service needs of [the utility's] customers." 220 ILCS 5/8-406(b)(1). Aqua's proposed water main is the least cost means of satisfying the service needs of University Park. Aqua studied three alternative means for meeting its University Park customers' need for higher quality water: (1) acquiring a Lake Michigan water supply for University Park; (2) building additional water treatment facilities in Aqua's University Park service area; and (3) constructing a water main to transmit softened, filtered water from Kankakee to University Park. (Aqua Exs. 1.0, pp. 11-12; 1.4, p. 46.) The results of Aqua's least-cost analyses are detailed in three separate studies: a "Water Supply Study for Aqua Illinois System at University Park, IL" (Aqua Ex. 1.4), a "Water Treatment Study for Aqua Illinois System at University Park, IL" (Aqua Ex. 2.4), and a "Hydraulic Water Model Analysis Report" (Aqua Ex. 2.3). These studies demonstrate that a water main is the least-cost means of supplying University Park customers with better (and more) water. (Aqua Ex. 1.0, p. 11.) Staff agrees. (ICC Staff Ex. 4.0, pp. 10-11.)

**1. Acquiring a Lake Michigan water supply is cost-prohibitive.**

There can be no reasonable dispute that it would be too costly to acquire a Lake Michigan water supply for University Park. Several obstacles make that option cost-prohibitive. (Aqua Ex. 1.4, p. 46.) For example, purchasing water from the City of Chicago would subject Aqua's

customers to pass-through price increases over which Aqua would have little control. (Aqua Ex. 1.0, p. 12.) Moreover, a connection between the City and University Park would have to traverse heavily urbanized areas. This would make construction of the connection costly. (*Id.*)

Staff agrees that it would not be least-cost to acquire a Lake Michigan water supply for University Park. Staff witness Mr. Atwood testifies that that option of resolving University Park's need for better water should be "dismissed [because of] the anticipated high costs of constructing water transmission pipeline a long distance through congested areas, the complex political and technical nature of acquiring water from the City of Chicago and transporting it through several communities and being a passive party to rate increases from upstream municipalities." (ICC Staff Ex. 1.0, p. 20.)

Although Peotone and Monee witness Mr. Nagel suggests that Aqua could explore obtaining Lake Michigan water for University Park from a closer community, he qualifies that he is "not saying [those] towns *can* supply the water to University Park," and he admits "[i]t is unknown if [they] have capacity in their supply line and pump station for University Park." (Peotone/Monee Jt. Ex. 1.0, p. 18 (emphasis added).) In fact, the record evidence shows they cannot supply University Park for the least cost. (Aqua Ex. 2.0, p. 47.) Acquiring a Lake Michigan water supply for University Park is simply not a viable option.

**2. Building new water treatment facilities in University Park will cost over \$21 million.**

Aqua's Water Supply Study initially estimated it would cost \$35 million to construct new water treatment facilities in University Park to supply existing and future customers there softened, filtered water. (Aqua Exs. 1.0, p. 12; 1.4, p. 6.) Aqua commissioned a second study, the Water Treatment Study, to evaluate that option further. (Aqua Exs. 2.0, p. 12; 2.4.) The Water Treatment Study estimates that it will cost at least \$21.4 million to construct treatment

plants and additional wells to treat water in sufficient quantities to meet the 4.8 mgd current required capacity of the existing system in University Park. (Aqua Exs. 2.0, p. 12; 2.4, p. 20.) That, however, does not provide for growth in demand on the system. (*Id.*)

**3. Constructing a water transmission main will cost \$13 million—\$8 million less than the water treatment option; therefore, that is the least-cost option.**

Aqua's Water Supply Study estimates that it will cost between \$9.4 and \$21.0 million, depending on the width and diameter of the pipe used, to construct a water main that connects to Aqua's existing 20-inch main at 8000 N. Road in Kankakee County and follows Will Center Road north to Aqua's storage and booster facilities along Central Avenue in University Park. (Aqua Ex. 1.4, p. 36, tbl. 17.) The estimates to install 24-inch and 30-inch ductile iron pipe, which is the standard pipe material that Aqua uses for new installations (*id.* at 27), are \$11.8 million and \$13.5 million, respectively (*id.* at 36, tbl. 17).

Aqua performed a hydraulic water analysis to further evaluate whether a 24-inch or a 30-inch main constructed along a Will Center Road route could provide the necessary flow for the least cost, considering current demand and the opportunity for growth in University Park. (Aqua Exs. 2.0, p. 11; 2.3; 3.0, p. 6.) The hydraulic water analysis shows that Aqua can combine a 24-inch ductile iron water main with its existing facilities and adequately serve current daily demand in University Park—and demand through at least 2040—without adding incremental pumping capabilities to its existing system or disturbing existing well reserve in University Park. (Aqua Exs. 2.0, pp. 11-12; 3.0, pp. 5-11; ICC Staff Ex. 4.0, pp. 9, 11.) As stated, the estimated cost of the 24-inch ductile iron water main itself is \$11.8 million. (Aqua Exs. 2.0, p. 11; 1.4, tbl. 44.) Including engineering and easement acquisition costs, the total estimated cost to construct the main is \$13 million. (Aqua Ex. 2.0, p. 11.) The most economical water treatment option, at \$21.4 million, will cost over \$8 million *more*. (*Id.* at 12.)

Further, as Aqua explained in surrebuttal, Aqua can combine construction of the main with improvements to its existing pumps at its Manteno Diversatech booster station to meet a potential future peak day demand in University Park of 4.8 mgd at an estimated additional cost of only \$100,000. (Aqua Ex. 3.0, p. 10.) Thus, the combined cost of the main and booster station upgrades to allow Aqua to meet a potential peak day of 4.8 mgd—\$13.1 million—remains significantly less than the \$21.4 million cost of the water treatment option. (*Id.*)

Staff agrees that construction of a 24-inch ductile iron water main along a Will Center Road route in Aqua’s proposed Water Certificate area is the least-cost means of meeting University Park customers’ need for softened, filtered water. (ICC Staff Ex. 4.0, pp. 10-11.) Staff witness Mr. Atwood agrees that Aqua “can continue to use existing pumping facilities to serve University Park, without additional costs for incremental pumping capabilities, through at least 2040.” (*Id.* at 9.) Even considering such additional pumping costs, however (which he recognizes as “much less” than the \$8.4 million difference between the main and water treatment options costs), he agrees that Aqua’s proposed main is least-cost. (*Id.* at 10.) He also aptly notes that, unlike the treatment option, the main leaves existing University Park wells in reserve. (*Id.*)

The record therefore shows that a 24-inch main along a Will Center Road route, as Aqua proposes, is the least-cost means of supplying University Park with better (and more) water.

**4. Intervenor’s criticisms of Aqua’s water main construction cost estimates are unfounded and ignore the record evidence.**

Peotone and Monee witness engineer Mr. Nagel testified that Aqua’s cost estimates for the water transmission main “appear to be reasonable.” (Peotone/Monee Jt. Ex. 1.0, p. 19.) Nevertheless, Intervenor’s criticize those estimates because they do not include the costs to operate, maintain, and replace the main, or to “loop” it. (*Id.* at 19; Peotone Ex. 2.0, pp. 8-9; Monee Ex. 2.0, p. 8; Wilmington Ex. 1.0, p. 6.)

Intervenors' suggestion that the cost estimates for the main should include operation, maintenance, and replacement costs are unfounded. The costs to operate and maintain the main relative to those to operate and maintain new water treatment facilities would not make a material difference in the overall relative costs of those options. (Aqua Ex. 2.0, p. 43.)

Intervenors' contention that the cost estimates for the main should include the cost to loop it simply ignores the record evidence. Aqua (thrice) explained in testimony that looping the main *may* be a *future* consideration, but it is not necessary to the proper operation of the main now or to supply University Park. (Aqua Exs. 1.0, p. 14; 2.0, p. 40; 3.0, p. 15.) In fact, Aqua successfully serves several communities without a fully looped system. (Aqua Exs. 2.0, p. 40; 3.0, p. 15.) Because looping is not necessary, and whether the main will be looped in the future is speculative, it is not appropriate to include the cost of looping in the cost estimates for the proposed main. (Aqua Ex. 3.0, p. 15.)

**C. Aqua has the managerial capability to construct the water transmission main.**

Section 8-406 requires that the Commission find that Aqua “is capable of efficiently managing and supervising the construction process [of the main] and has taken sufficient action to ensure adequate and efficient construction and supervision thereof” to grant Aqua the Water Certificate. 220 ILCS 5/8-406(b)(2). The record evidence shows that Aqua has the requisite managerial capability. (Aqua Exs. 1.0, p. 15; 2.0, p. 13.) This point is not in dispute.

Staff witness Mr. Atwood acknowledges that Aqua “has consistently demonstrated that its water and sewer systems in Illinois are well operated, efficiently managed and supervised, and that its equipment is well maintained. Aqua has many years of experience managing and supervising this type of construction.” (ICC Staff Ex. 1.0, pp. 12-13.)

Intervenors do not disagree. They did not present any evidence regarding Aqua's

managerial capabilities, let alone evidence disputing them.

**D. Aqua has the financial capability to finance the water transmission main.**

Section 8-406 requires that the Commission also find that Aqua “is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers” to grant Aqua the Water Certificate. 220 ILCS 5/8-406(b)(3). Again, the record evidence supports this finding, and this is not disputed.

In addition to the day-to-day working capital it has to operate the proposed water transmission main, Aqua has bank lines of credit totaling \$8 million that are available to finance its capital needs. (Aqua Exs. 1.0, p. 15; 2.0, p. 16.) Also, Aqua’s parent, Aqua America, has approximately \$85 million of equity invested in Aqua Illinois, and it is committed to investing additional capital as needed. (Aqua Ex. 1.0, pp. 15-16.)

Staff witness Ms. Freetly recognizes that Aqua has access to a variety of funds to finance the main. (ICC Staff Ex. 2.0, p. 2.) She agrees that Aqua is capable of financing the main without significant adverse financial consequences for Aqua or its customers. (*Id.* at 3.)

Intervenors do not dispute Aqua’s financial capabilities.

**E. Intervenors’ desire to lay sole claim to the Water Certificate area (and beyond) is not reason to deny Aqua the Water Certificate or its University Park customers better drinking water.**

Intervenors’ evidence in this proceeding, on the whole, ignores the need for softened, filtered drinking water in University Park. Yet, Intervenors oppose *wholesale* the Water Certificate—and, consequently, a resolution to University Park residents’ water concerns—even though the Water Certificate area does not encompass any of Intervenors’ municipal corporate boundaries and the majority of it is outside their municipal planning areas.<sup>4</sup> And even where the

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<sup>4</sup> Large portions of the Water Certificate area also are outside *all* areas in which Intervenors claim they have an interest. (See Appx. B, C (Aqua Exs. 3.2, 3.3).) Despite this, they oppose the Water Certificate in its entirety.

Water Certificate area overlaps, to a limited extent, Peotone and Monee's municipal planning areas, the Villages have no immediate plans to offer water utility service or construct water infrastructure. Finally, even if the Villages did plan to offer such service, it would not legally preclude Aqua from also serving customers in the area, as Intervenor's admit. Simply put, Intervenor's alleged interest in areas beyond their corporate limits is neither a practical nor legal bar to the Water Certificate.

**1. The Water Certificate area excludes Intervenor's corporate limits.**

Crucially, the Water Certificate area does not encompass any municipal corporate boundaries, including Peotone and Monee's. (Aqua Ex. 2.0, p. 6.) The map attached as Appendix A shows this. (Aqua Ex. 2.1, p. 1.) (The eastern boundary of Wilmington's corporate limits is *17 miles* from the western boundary of the Water Certificate area. (Aqua Ex. 2.0, p. 23).<sup>5</sup>) The area does not encompass areas where Intervenor's already provide water service.

**2. Intervenor's have no present plans to extend water utility service or water infrastructure beyond their current corporate limits.**

The Illinois Municipal Code permits municipal plan commissions to create a comprehensive plan for present and future development beyond their corporate limits, but the plan only applies to "land situated within the [municipality's] corporate limits and contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality." 65 ILCS 5/11-12-5(1). Both Peotone and Monee have developed comprehensive plans for the one and one-half mile area outside of their corporate limits.

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<sup>5</sup> Wilmington opposed the Water Certificate as originally proposed based on its desire to provide water service to anticipated population growth in southern Will County. (Wilmington Ex. 1.0, pp. 7-8.) Wilmington's own system, however, is troubled. (Aqua Ex. 3.0, pp. 19-20.) And the Water Certificate area does not include any areas in Wilmington's corporate limits, or its mile municipal planning area, or covered by its boundary expansion agreements with neighboring municipalities, in any event. (Aqua Ex. 2.1.) Wilmington did not submit rebuttal testimony or otherwise oppose the Water Certificate as narrowed in Aqua's rebuttal filing, as explained *supra* in footnote 2.

(Peotone Ex. 1.0, p. 6; Monee Ex. 1.0, p. 7.) The Water Certificate area overlaps these planning areas, but only to a limited extent—less than one square mile of Peotone’s planning area, and less than four square miles of Monee’s. (Aqua Ex. 3.0, p. 16.) The maps attached as Appendices B and C show the limited overlap. (Aqua Exs. 3.2; 3.3.) Importantly, neither Peotone nor Monee have present plans to provide water utility service in their planning areas or to construct related infrastructure there. (Aqua Ex. 3.0, p. 17.)

Monee considers its comprehensive plan obsolete, and thus does not have a definitive plan for the Village’s one and one-half mile planning radius. (Monee Ex. 1.0, p. 8.) And it has no immediate plans to annex territory to its corporate boundaries. (*Id.* at 5.)

Peotone likewise has no plans to annex territory. (Peotone Ex. 1.0, p. 6; Aqua Ex. 3.4, p. 3.) Nevertheless, Peotone’s comprehensive plan covers territory well beyond the statutory one and one-half mile limit. 65 ILCS 5/11-12-5(1); (Peotone Ex. 1.0, p. 9; Aqua Ex. 3.4, p. 2). In fact, Peotone’s plan extends many miles beyond its corporate limits, to fictional boundaries beyond which Peotone has agreed with certain neighboring municipalities not to encroach should its corporate limits expand.<sup>6</sup> (Aqua Ex. 3.4, p. 2.) But, apart from generically showing 12-inch mains along *all* major roads throughout this expansive area, Peotone’s comprehensive plan demonstrates that the Village has no present plan to extend water service, or the attendant infrastructure, into its one and one-half mile municipal planning area. (*Id.*; Peotone Ex. 3, p. 14.) Rather, its comprehensive plan otherwise demonstrates “build out” only so far as Ridgeland Avenue. (Aqua Ex. 3.4, p. 2.) Ridgeland Avenue is nearly two miles from Will Center Road,

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<sup>6</sup> Section 11-12-9 of the Illinois Municipal Code permits neighboring municipalities to agree upon a fictional line beyond which each agrees not to expand in the event their statutory one and one-half mile planning radiuses overlap. 65 ILCS 5/11-12-9 (“If unincorporated territory is within one and one-half miles of the boundaries of two or more corporate authorities that have adopted official plans, the corporate authorities involved may agree upon a line which shall mark the boundaries of the jurisdiction of each of the corporate authorities who have adopted such agreement.”).



and *a full mile* from the western boundary of the Water Certificate area. (Aqua Ex. 3.0, p. 17; 3.4, pp. 1-2.)

Notably, Peotone and Monee's speculation about eventual growth beyond their current boundaries and planning areas does not preclude other municipalities' expansion into or plans for the same areas. (Aqua Ex. 2.0, p. 26.) For example, University Park does not have a boundary agreement with any community that would limit its future expansion into Will County. (*Id.* at 26.) (University Park's 1982 boundary agreement with Monee expired in 2002. (*Id.* at 26-27); 65 ILCS 5/11-12-9 ("Any agreement for a jurisdictional boundary line shall be valid for such term of years as may be stated therein, but not to exceed 20 years, and if no term is stated, shall be valid for a term of 20 years.")) Also, although Peotone has a 1997 boundary agreement with the Village of Manteno demarcating Peotone's expansion to the south and Manteno's to the north, that agreement expires in 2017. (Aqua Ex. 2.0, p. 37); 65 ILCS 5/11-12-9. Finally, Wilmington alleges tenuous plans to extend water service well outside its corporate boundaries into areas of southern Will County encompassed by Peotone's comprehensive plan due to anticipated growth there. (Wilmington Ex. 1.0, pp. 7-8.) Put simply, Peotone and Monee's speculation as to their future expansion does not and has not impeded other municipalities' expansion plans. And that speculation is not a sufficient basis to preclude Aqua's Water Certificate either. *See, e.g., N. Moraine Water Reclam. Dist. v. Ill. Comm. Comm'n*, 391 Ill. App. 3d 542, 565-68 (1st Dist. 2009) (affirming Commission order granting utility a Certificate to provide wastewater treatment service over intervening sewer district's objection because the record showed that the district had no operating system in the subject area and was not ready, willing, and able to serve the area at any cost, much less at a cost lower than the utility's).)

**3. Even if Intervenor had immediate plans beyond their corporate limits, those plans legally would not bar the Water Certificate.**

Nothing in the Public Utilities Act grants a public utility an exclusive right to service a particular area. *Fountain Water Dist. v. Ill. Comm. Comm'n*, 291 Ill. App. 3d 696, 700 (5th Dist. 1997) (affirming Commission order granting water utility a Certificate to transact utility business within the geographical boundaries of a public water district). Thus, “there is nothing to prevent a municipally owned utility from competing directly in the same area of operation with a privately owned utility.” *People ex rel. Buffalo Util. Co. v. Vill. of Buffalo Grove*, 85 Ill. App. 2d 382, 387 (1st Dist. 1967). In other words, public utility service and municipal utility service are not mutually exclusive, and it is not the role of the Commission to police or limit competition between the two.

Even if Peotone and Monee had present plans to install water infrastructure or to provide water service in their municipal planning and boundary agreement areas (they do not), those plans would not bar the Water Certificate. Peotone and Monee do not disagree. The Villages concede that their boundary expansion agreements with other municipalities do not give them exclusive jurisdiction over the areas covered by those agreements. (Aqua Ex. 3.0, pp. 17-18; 3.4, p. 6; 3.5, p. 4.) And Peotone witness Mr. Gray aptly acknowledges that “[n]othing in the granting of the Certified Area prohibits a municipal utility from serving the certificated area.” (Peotone Ex. 1.0, pp. 23-24.) The Water Certificate legally will not impede Peotone and Monee’s ability to serve existing and future customers inside—and outside of—their corporate limits. (Aqua Ex. 1.0, p. 14.)

#### **IV. AQUA HAS MET THE REQUIREMENTS FOR THE LIMITED CERTIFICATE**

Aqua also requests certification to provide water and sewer service to two limited areas of Will County to clarify a discrepancy between the maps and legal description underlying a Certificate issued to Aqua by the Commission in Docket No. 87-0402. (Aqua Ex. 1.0, p. 7.) These areas are shown in pink on Appendix A. (Aqua Ex. 2.1, p. 1.)

Section 8-406 of the Public Utilities Act permits the Commission to grant Aqua the Limited Certificate if, as with the Water Certificate, Aqua shows that its proposal: (1) is (a) necessary to provide adequate, reliable, and efficient service to Aqua's customers and (b) the least-cost means of satisfying their service needs; (2) Aqua has the managerial capability; and (3) Aqua has the financial capability. 220 ILCS 5/8-406(b)(1)-(3).

Aqua has satisfied the Section 8-406(b) requirements for the Limited Certificate. Staff agrees. First, there is a need for service in the limited areas—Aqua has been asked to provide water and wastewater service there, including to a planned mixed-use development consisting of 324 residential and commercial units. (Aqua Ex. 1.0, p. 7; ICC Staff Ex. 1.0, p. 10.) There also is a need to reconcile the Docket No. 87-0402 Certificate's discrepancies so that Aqua can continue to serve existing customers in the limited areas. (*Id.*) No other public utility has a Certificate to provide water and/or sewer service to the limited areas, and no municipalities near the limited areas have expressed an interest in serving them. (ICC Staff Ex. 1.0, pp. 8-9.) Also, Aqua's existing systems have the capacity to provide the necessary service and for the least-cost given its existing University Park service area's proximity to the limited areas. (*Id.* at 10-12.) Further, because Aqua's existing University Park service area is closest to the limited areas, no other public utility is capable of providing service more cost effectively than Aqua. (*Id.*) Finally, as with the Water Certificate area, Aqua has the requisite managerial and financial capabilities to serve the limited areas. (*Id.* at 12-13; ICC Staff Ex. 2.0, pp. 2, 3.) Based on this,

Staff concludes that Aqua has met the Section 8-406 requirements for the Limited Certificate, and Staff expressly recommends that the Commission grant the Limited Certificate. (ICC Staff Ex. 1.0, pp. 13, 21-23.)

Peotone and Monee expressly do not object to certification of the limited water and wastewater areas. (Aqua Exs. 3.0, p. 22; 3.4, p. 4 (data request AQUA-VOP 3.01); 3.5, p. 1 (data request AQUA-VOM 2.03).) Wilmington raised no substantive opposition to that certification. (Aqua Ex. 3.0, p. 22.)

## **V. PROPOSED RATEMAKING AND ACCOUNTING TREATMENT**

Aqua proposes to apply in the Water Certificate and Limited Certificate areas the rates for water and sewer service, as applicable, established in the water and wastewater tariffs on file with the Commission and currently in effect for its University Park Division. (Aqua Ex. 1.0, p. 18.) Aqua also proposes that its current Rules, Regulations and Conditions of Service tariffs for water and wastewater service in University Park on file with the Commission and currently in effect apply in the Water Certificate and Limited Certificate areas. (*Id.*) Staff agrees with these proposals. (ICC Staff Ex. 1.0, pp. 13-14.) Intervenors took no position on them.

Aqua proposes to use the water and sewer depreciation rates currently used for its University Park Division, as applicable, in the Water Certificate and Limited Certificate areas. (Aqua Ex. 1.0, p. 19.) Again, Staff agrees with this proposal. (ICC Staff Ex. 1.0, pp. 14-15.) Again, Intervenors took no position on it.

Finally, Aqua proposes to record the original cost of all water facilities constructed in the Water Certificate and Limited Certificate areas in the applicable Utility Plant in Service Accounts (Account 101), and to record any contributions or deposits for the facilities as contributions in Account 271, Contributions in Aid of Construction. (Aqua Ex. 1.0, pp. 19-20.) Staff agrees this accounting treatment accords with Commission policy and the Uniform System

of Accounts for Water Utilities, and it recommends that the Commission accept Aqua's proposed accounting treatment for facilities in the Water Certificate and Limited Certificate areas. (ICC Staff Ex. 3.0 (Bridal Dir.), pp. 2-3.) Again, Intervenors took no position on this proposal.

## **VI. CONCLUSION**

Aqua has met all of the requirements for the Water Certificate and Limited Certificate it requests in this proceeding. Staff agrees. Only Intervenor municipalities oppose Aqua's Water Certificate—not because the proposed certificated area encompasses their corporate boundaries (it does not), but because they want to monopolize territory many miles beyond those limits, to the exclusion of Aqua and others. Intervenors, however, have no present plans to extend utility infrastructure or service in the Water Certificate area. And, even if they did, those plans would not bar the Water Certificate. Intervenors' wholesale opposition to the Water Certificate—including proposed certificated areas far outside of any area in which they claim an interest—is inappropriate and unreasonable given the impetus for the Water Certificate: University Park residents' repeated demands for better drinking water. The Commission should not accord Intervenors' narrow and self-serving objections to the Water Certificate any weight. It should grant Aqua both the Limited Certificate and the Water Certificate, and thereby authorize Aqua, finally, to bring softened, filtered drinking water to its customers in University Park.

Dated: March 6, 2014

Respectfully submitted,

AQUA ILLINOIS, INC.

/s/ Anne M. Zehr

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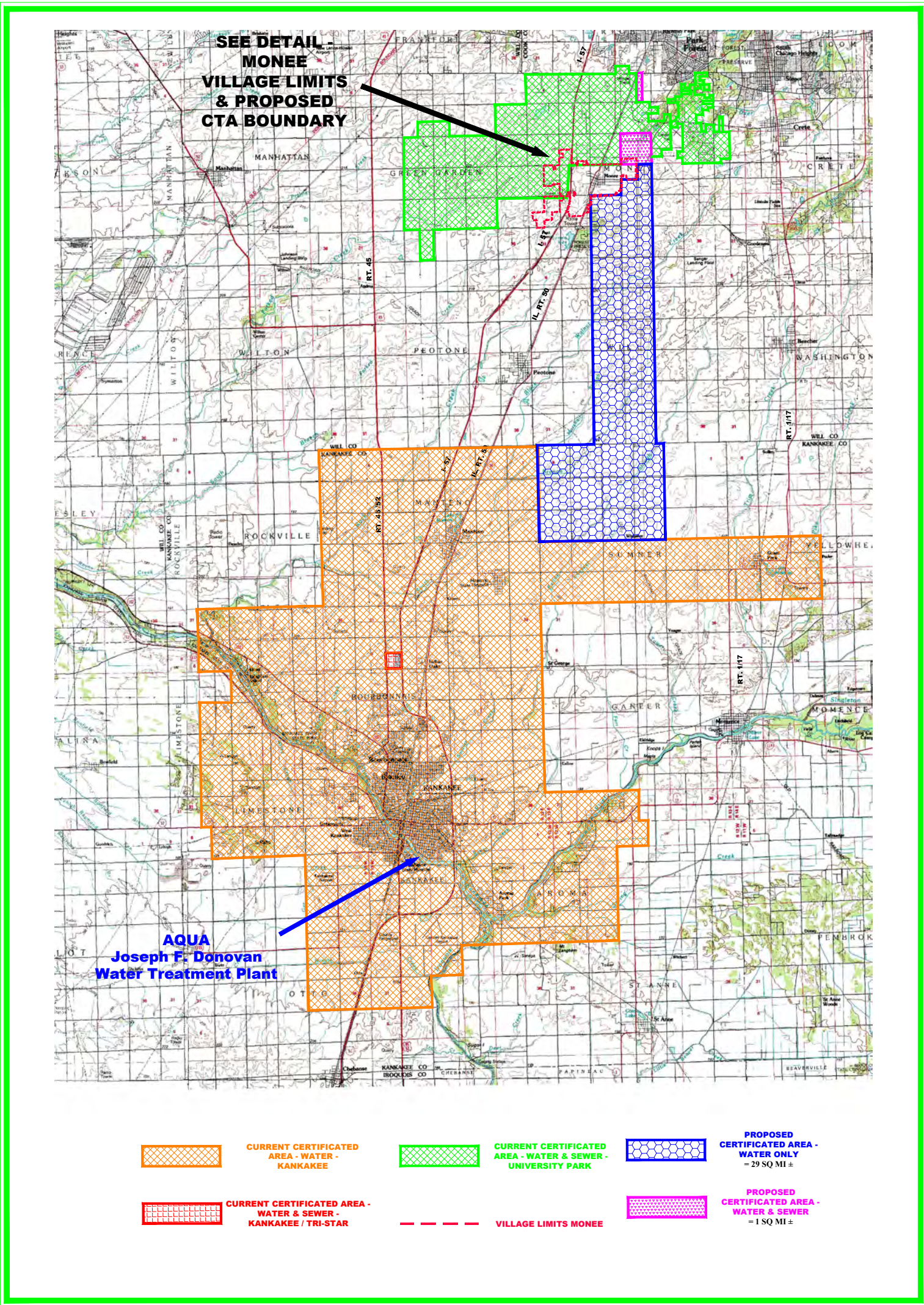
**CERTIFICATE OF SERVICE**

I, Anne M. Zehr, an attorney, certify that on March 6, 2014, I caused a copy of the foregoing *Aqua Illinois, Inc. 's Initial Brief* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 13-0246.

/s/ Anne M. Zehr  
Attorney for Aqua Illinois, Inc.



# AQUA ILLINOIS, INC.

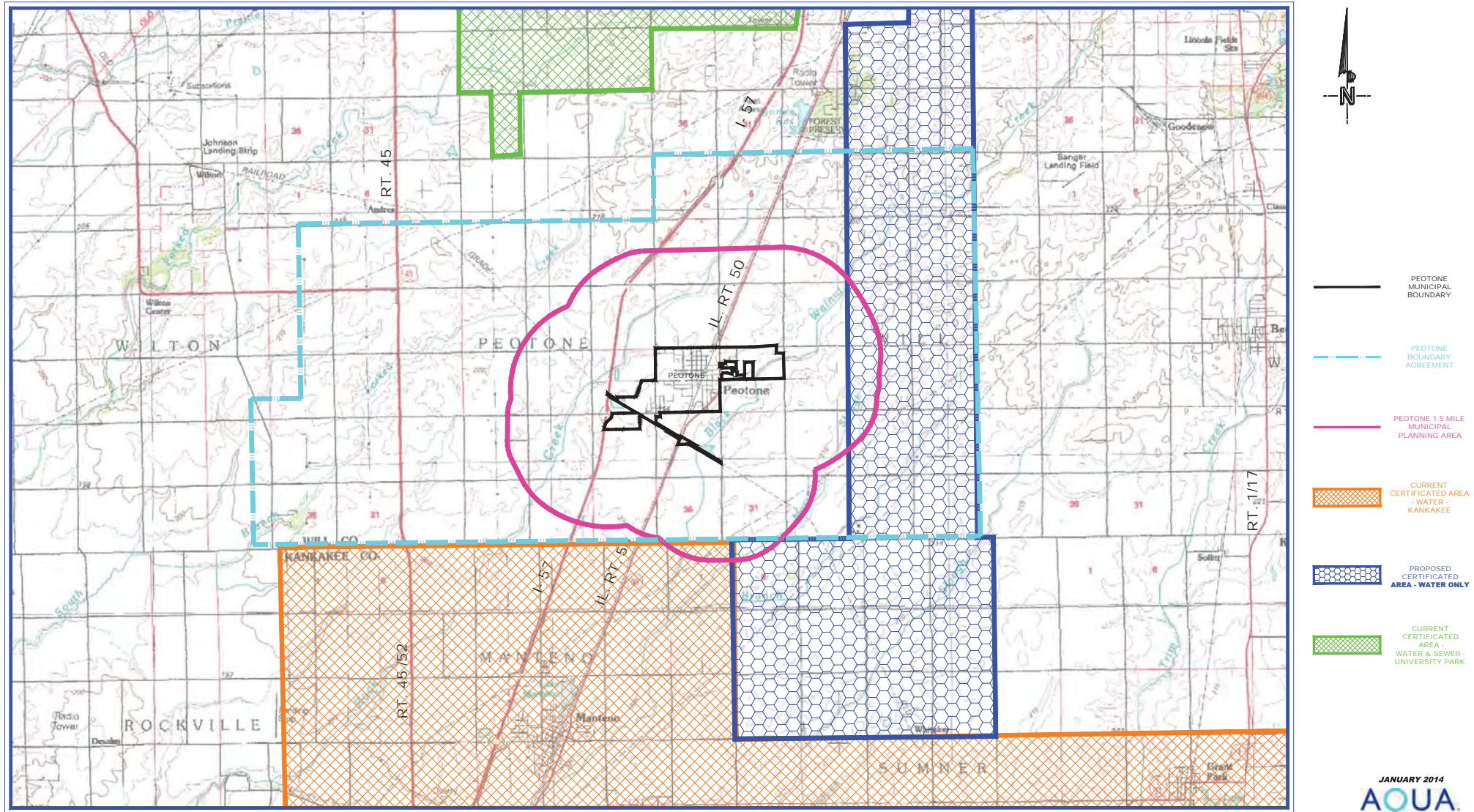




# Appendix B

Aqua Exhibit 3.2

EXHIBIT 3.2 - PEOTONE 1.5 MILE MUNICIPAL PLANNING AREA & BOUNDARY AGREEMENT





## Appendix C

Aqua Exhibit 3.3

## EXHIBIT 3.3 - MONEE 1.5 MILE MUNICIPAL PLANNING AREA & BOUNDARY AGREEMENT

